

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL WHITFIELD,

Case No. 3:23-cv-00123-MMD-CSD

Plaintiff,

ORDER

v.

J. KEAST, *et al.*,

Defendants.

I. SUMMARY

Plaintiff Michael Whitfield brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations. (ECF No. 6.) On July 19, 2023, the Court issued a screening order providing that Plaintiff must file an amended complaint within 30 days of the date of that order. (ECF No. 5 at 9.) The Court warned Plaintiff that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.*) That deadline expired, and Plaintiff did not file an amended complaint, move for an extension, or otherwise respond. In addition, the Court issued an order on July 21, 2023, stating that Plaintiff must update his address with the Court within 30 days. (ECF No. 9 at 1.) If Plaintiff failed to update his address, the Court warned that the action could be dismissed without prejudice. (*Id.*) The Court sent a courtesy copy of that order and all previous orders and attachments to the prison in which Plaintiff was currently housed. (ECF No. 11.) The deadline expired without Plaintiff filing an updated address.

II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court

1 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
2 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
3 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
4 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
5 dismiss an action on one of these grounds, the Court must consider: (1) the public's
6 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
7 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
8 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
9 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
10 *Malone*, 833 F.2d at 130).

11 The first two factors, the public's interest in expeditiously resolving this litigation
12 and the Court's interest in managing its docket, weigh in favor of dismissing Plaintiff's
13 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
14 because a presumption of injury arises from the occurrence of unreasonable delay in filing
15 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
16 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
17 cases on their merits—is greatly outweighed by the factors favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic alternatives can
19 be used to correct the party's failure that brought about the Court's need to consider
20 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
21 that considering less drastic alternatives *before* the party has disobeyed a court order
22 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
23 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
24 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
25 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
26 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
27 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
28 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779

1 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
2 unless Plaintiff files an amended complaint, the only alternative is to enter a second order
3 setting another deadline. But the reality of repeating an ignored order is that it often only
4 delays the inevitable and squanders the Court's finite resources. The circumstances here
5 do not indicate that this case will be an exception: there is no hint that Plaintiff needs
6 additional time or evidence that he did not receive the Court's screening order. Setting
7 another deadline is not a meaningful alternative given these circumstances. So the fifth
8 factor favors dismissal.

9 **III. CONCLUSION**

10 Having thoroughly considered these dismissal factors, the Court finds that they
11 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
12 prejudice based on Plaintiff's failure to file an amended complaint in compliance with this
13 Court's order and for failure to state a claim, along with Plaintiff's failure to update his
14 address.

15 The Clerk of Court is directed to enter judgment accordingly and close this case.
16 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his
17 claims, he must file a complaint in a new case.

18 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
19 No. 4) is granted. Plaintiff shall not be required to pay an initial installment of the filing fee.

20 It is further ordered that, under 28 U.S.C. § 1915, as amended by the Prison
21 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
22 the account of Michael Whitfield, #1215111 to the Clerk of Court, 20% of the preceding
23 month's deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee
24 has been paid for this action. The Clerk of Court will send a copy of this order to the
25 Finance Division of the Clerk's Office. The Clerk of Court will send a copy of this order to
26 the attention of Chief of Inmate Services for the Nevada Department of Corrections at
27 formapauperis@doc.nv.gov.

1 It is further ordered that, even though this action is dismissed, or is otherwise
2 unsuccessful, the full filing fee will still be due, under 28 U.S.C. § 1915, as amended by
3 the Prison Litigation Reform Act.

4 DATED THIS 1st Day of September 2023.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE